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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 SONOS, INC.,

13 Plaintiff,

14 vs.

15 GOOGLE LLC,

16 Defendant.

Case No. 3:21-cv-07559-WHA

Related to Case No. 3:20-cv-06754-WHA

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS ANSWER TO SONOS,
INC.'S THIRD AMENDED COMPLAINT**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Answer to Sonos, Inc.’s (“Sonos”) Third Amended Complaint (“Answer”). Specifically, Google requests an order granting leave to file under seal the portions of the documents listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Google’s Answer	Portions highlighted in green	Google
Exhibit 2 to Google’s Answer	Entire Document	Google
Exhibit 3 to Google’s Answer	Entire Document	Google
Exhibit 4 to Google’s Answer	Entire Document	Google

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mutual Auto. Insurance Company*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

The Ninth Circuit has recognized that two different standards may apply to a request to seal a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). The compelling reasons standard applies to any sealing request made in connection with a motion that

1 is “more than tangentially related to the merits of a case.” *Id.* Accordingly, courts in this district
 2 apply a “compelling reasons” standard to a sealing request made in connection with an answer to a
 3 complaint. *See, e.g., VLSI Tech. LLC v. Intel Corp.*, No. 17-CV-05671-BLF, 2021 WL 6063965, at
 4 *1 (N.D. Cal. Dec. 22, 2021); *Delfino Green & Green v. Workers Compensation Sols., LLC*, No.
 5 15-CV-02302-HSG, 2015 WL 4235356, at *2 (N.D. Cal. July 13, 2015).

6 **III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION**

7 Material that is confidential and could harm a litigant’s competitive standing if disclosed
 8 may be sealed under the compelling reasons standard. *Icon-IP Pty Ltd. v. Specialized Bicycle*
 9 *Components, Inc.*, No. 12-cv-03844-JST2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015)
 10 (information “is appropriately sealable under the ‘compelling reasons’ standard where that
 11 information could be used to the company’s competitive disadvantage”); *In re Qualcomm Litig.*,
 12 No. 3:17-CV-0108-GPC-MDD, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017) (concluding that
 13 “compelling reasons exist to seal . . . information subject to confidentiality and non-disclosure
 14 provisions” because “[s]uch insight could harm the parties in future negotiations with existing
 15 customers, third-parties, and other entities with whom they do business”).

16 The green-highlighted portions of Google’s Answer and Exhibit 2 contain confidential
 17 business information that could significantly harm Google’s competitive standing if disclosed.
 18 Specifically, the highlighted portions of Google’s Answer and Exhibit 2 include terms to
 19 confidential agreements and information regarding Google’s business partnerships which have not
 20 been disclosed to the public. The public disclosure of this information would harm Google’s
 21 competitive standing and its ability to negotiate future agreements by giving competitors access to
 22 Google’s highly confidential business thinking and asymmetrical information about Google’s
 23 collaboration strategies and partnerships with other entities. Declaration of Jocelyn Ma (“Ma
 24 Decl.”) ¶¶ 4, 5. A less restrictive alternative than sealing the highlighted portions of Google’s
 25 Answer as well as Exhibit 2 would not be sufficient because the information sought to be sealed is
 26 Google’s proprietary and confidential business information but is integral to the affirmative defenses
 27 in Google’s Answer. *Id.* Thus, Google has compelling reasons to keep such information under seal.
 28 *See In re Qualcomm Litig.*, 2017 WL 5176922, at *2 (finding that “compelling reasons exist to seal

1 the unredacted portions of the pleadings and briefing that concern licensing terms, royalties paid or
2 owed under license agreements, financial terms, details of confidential licensing negotiations, and
3 business strategies, along with those exhibits that contain the various confidential business
4 agreements executed among the parties”); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 570 (9th Cir.
5 2008) (directing district court to seal licensing agreement); *Koninklijke Philips N.V. v. Elec-Tech*
6 *Int’l Co.*, No. 14-CV-02737-BLF, 2015 WL 581574, at *2 (N.D. Cal. Feb. 10, 2015) (sealing
7 “discussions regarding potential partnerships with other product manufacturers” because
8 competitive harm from “inform[ing] competitors of . . . non-public attempts to develop new business
9 relationships” met the compelling reasons standard).

10 Exhibits 3 and 4 contain confidential information regarding highly sensitive features of
11 Google’s products. Specifically, these exhibits detail the operation and system design of Google
12 products and functionalities that Sonos accuses of infringement. Public disclosure of these exhibits
13 would harm the competitive standing Google has earned through years of innovation and careful
14 deliberation by revealing sensitive aspects of Google’s proprietary systems, strategies, designs, and
15 practices to Google’s competitors. Ma Decl. ¶ 6. A less restrictive alternative than sealing Exhibits
16 3 and 4 would not be sufficient because the information sought to be sealed is Google’s proprietary
17 and confidential business information but is integral to the affirmative defenses in Google’s Answer.
18 *Id.* Thus, Google has compelling reasons to keep such information under seal. *See Delphix Corp.*
19 *v. Actifo, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (finding
20 compelling reasons to seal where court filings contained “highly sensitive information regarding [an
21 entity’s confidential] product architecture and development”); *Guzik Tech. Enterprises, Inc. v. W.*
22 *Digital Corp.*, No. 5:11-CV-03786-PSG, 2013 WL 6199629, at *4 (N.D. Cal. Nov. 27, 2013)
23 (sealing exhibit containing “significant references to and discussion regarding the technical
24 features” of a litigant’s products).

25 **IV. CONCLUSION**

26 For the foregoing reasons, Google respectfully requests that the Court grant Google’s
27 Administrative Motion to File Under Seal Portions of its Answer to Sonos’s Third Amended
28 Complaint.

1 DATED: July 22, 2022

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on July 22, 2022, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: July 22, 2022

By: /s/ Charles K. Verhoeven
Charles K. Verhoeven